

A continuation or divisional application filed under 37 CFR 1.53(b) of a prior application in which a petition under 37 CFR 1.48 to add an inventor was filed should be filed with a copy of the executed declaration naming the correct inventive entity from the prior application or a newly executed declaration naming the correct inventive entity. A copy of any decision under 37 CFR 1.48 from the prior application is not required to be filed in the continuation or divisional application.

Thus, the MPEP practice quoted above permits applicants to file a “a copy of the executed declaration naming the correct inventive entity from the prior application.” Applicants have done so. See SUPPLEMENTAL COMMUNICATION TO THE EXAMINER mailed May 27, 1998 in this application, and attached Declaration of Co-Inventor Luan Tran and Supplemental Declaration of Co-Inventor Howard E. Rhodes. Such Declarations were filed in parent Application Serial No. 08/789,072. Applicants submit that these declarations comply with the requirements of MPEP §602.05(a).

Also in the Office Action, the Examiner required a new title for the invention. However, applicants wish to point out that the title of this application was amended in a Preliminary Amendment which accompanied the application papers in this application. Applicants believe that the title, as amended, is descriptive of the presently claimed invention.

Also in the Office Action, the Examiner rejected claim 29 under 35 USC §112, first paragraph, as “containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” Specifically, the Examiner stated that the subject matter which was allegedly not properly described was found in line 2 of claim 29. Claim 29, which depends from claim 26, recites, in pertinent part, that the “first conductive material comprises polysilicon” and that the “second conductive material comprises a metal.”

Applicants believe that the specification as filed contains a description of these aspects of the presently-claimed invention. Specifically, in the specification at page 5, lines 28-30, applicants recite that: “a first region of a polysilicon top electrode [is] formed on the dielectric over the bottom electrode.” At page 8, line 26, and referring to Fig. 6, applicants recite that:

"Conductive layer 26 is doped polysilicon." Thus, the specification describes a conductive polysilicon layer which is positioned on a first layer of material having an opening therein (as recited in independent claim 26, from which claim 29 depends). Further, in the specification at page 11, line 34, and referring to Fig. 16, applicants recite a: "Metal conductor 95" which contacts "cell poly 80." As shown in Fig. 16, metal conductor 95 substantially fills the contact hole, differs in composition from the first conductive material, and contacts that first conductive material (i.e., the cell poly 80. For all of these reasons, applicants submit that the subject matter of claim 29 is described in a manner which complies with §112.

Also in the Office Action, the Examiner rejected claims 21-28 and 30 under the judicially-created doctrine of obviousness-type double patenting over claims 1, 7, and 8 of U.S. Patent No. 5,827,770. U.S. Patent No. 5,827,770 issued from Serial No. 789,072. The '072 application (which is the parent to the present application) was, in turn, a file wrapper continuation of application Serial No. 399,844 (the grand-parent application). The relationship of these applications is found on the face of the '770 patent and is also set out in the Cross-Reference to Related Applications section of the Specification (See the Preliminary Amendment accompanying the application papers in the present application). The grand-parent '844 application presented process claims 22-26 which were the subject of a restriction requirement by the Examiner in charge of that application. See, the Office Action mailed August 20, 1996, in Serial No. 399,844. Thus, the present application, which is styled as a divisional of the parent '770 patent, is now simply presenting non-elected claims from the grand-parent application. As those claims were the subject of a restriction requirement, an obviousness-type double patenting rejection is not properly taken. See, 35 USC §121 and MPEP §804.01.

Serial No. 09/008,531
MIO 012 V2/94-0112.04

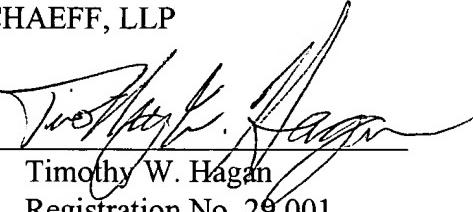
- 4 -

For all of the above reasons, applicants submit that the claims are in compliance with the statute and are in condition for allowance. Early notification of allowable subject matter is respectfully solicited.

Respectfully submitted,

KILLWORTH, GOTTMAN, HAGAN
& SCHAEFF, LLP

By



Timothy W. Hagan

Registration No. 29,001

One Dayton Centre
One South Main Street, Suite 500
Dayton, Ohio 45402-2023
(937) 223-2050
Facsimile: (937) 223-0724
E-mail: hagant@kghs.com